

*Transboundary Impacts Analysis is Flawed*

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Existence of a political boundary has provided opportunity to muddy the extent of the Secretary's discretion in managing the Lower Colorado River. Just as in the section dismissing the Pacific Institute proposal, the DEIS contains misleading statements regarding water deliveries to Mexico and flows beyond the border. For example, the DEIS avers that the reductions in Colorado River flows that have adversely affected the delta ecosystem "have been instituted through an international treaty." (3.16-13). As explained above, the Treaty sets *minimum* requirements for deliveries to Mexico; the DEIS should clarify that reductions in historic flow to the delta are the result U.S. actions.

18: Comment noted. Section 3.16.6.1 has been revised to state that "... reductions have been instituted while meeting the requirements of an international treaty and the diversion and use of such Treaty water is solely of Mexico's discretion." At least since execution of the Treaty, it is incorrect to state that responsibility for reductions of flows to the Colorado River delta lies with United States interests alone.

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Further, the claim that "potential effects on Mexico's resources cannot be specifically determined due to the uncertainty of water use once it flows across the NIB into Mexico," (3.16-1), is simply untrue. Morelos Dam, to which the U.S. is obligated to deliver a portion of Mexico's Treaty waters, is below the NIB. Twenty-three miles from the NIB to the SIB is bordered by the U.S. By managing and bordering the river below the NIB, the U.S. cannot claim ignorance once water crosses the NIB. In fact, Reclamation does possess data concerning the use of water in Mexico:

19: Section 3.16 has been revised to reflect available information at NIB. Mexico retains control at Morelos Dam as to what is done with the water that arrives there. However, excess water diverted may not be consumptively used in Mexico, but released back to the Rio Hardy and Colorado River as waste and/or irrigation drainage. No data is available to Reclamation on the amount of these wasteway and drainage return flows, so final disposition of diverted water is not known by Reclamation.

relatively little of the water in excess of the 1.5 to 1.7 MAFY treaty allocation is diverted for irrigation. Diversions to irrigation canals below Morelos Dam exceeded 1.7 MAFY in only 14 of the 24 years since 1950 in which deliveries to Mexico were greater than 1.7 MAFY. In those 14 years, an average of about 523,000 AFY was diverted to irrigation canals. . . . Therefore, on average, about 10 percent of the flood flows were diverted for irrigation in those 14 years.

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Salton Sea Restoration Draft EIS/EIR (Reclamation 2000) at 3-23. In other words, in 24 of 48 years excess flows have reached Morelos Dam and in 14 of those 24 years Mexico diverted a small fraction of that water. In all of those 24 years Mexico sent flows to the delta and in the other 24 years no flows reached the delta. Interim surplus criteria will ensure that excess flows reach the delta even more sporadically, if at all.

20: See above response. Note that the EIS presents information with regard to Colorado River flows to Mexico under baseline conditions and the alternatives. Note also that additional information has been added to the discussion of these flows in section 3.3.4.5.4 entitled "River Flows between Imperial Dam and Morelos Dam" of the FEIS.

Sensitive Species

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We were encouraged that Reclamation included an analysis of transboundary impacts in the DEIS. However, our hopes that Reclamation would initiate research efforts to combat their earlier recognition of the sparse ecological and biological data on the vaquita and totoaba were dashed when we saw that the most of the analysis of the vaquita and totoaba were taken straight from the Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River (Reclamation 1996). The deficiencies from that analysis have not been remedied and carry the same lack of research and information from 1996 into 2000. This is especially disappointing because Reclamation already knows its ongoing activities in the Lower Colorado River may affect the totoaba and is unsure about their effects on the vaquita, the

21: See response to Comment 10-8.

cont'd | world's rarest marine mammal.

Moreover, there are numerous references in the text for which complete citations are not provided or for which basic information has been overlooked. Standing alone, these omissions are not particularly serious; however, in the context of full disclosure and rigorous investigation, they raise questions about the quality of the workmanship. Omissions coupled with conclusions not supported by existing data raise real concerns about the product. Please amend the following pages:

- 22 | (3.16-16)
  - the vaquita is listed as endangered by the U.S. government, 50 Fed.Reg. 1056 (January 9, 1985); the Mexican government, Normas Oficiales Mexicanas NOM-059-ECOL-1994; and 'critically endangered' by the IUCN;
- 23 |
  - (Taylor and Gerrodette 1993) is not in References Cited;
- 24 |
  - (Barlow et al. in press) should read (Barlow et al. 1997) and the reference should reflect that change. The title should read "First Estimates..." and contain an updated citation;
- 25 | (3.16-17)
  - (Rojas-Bracho) is not in References Cited, and with no title or date, it is hard to determine its relevance;
- 26 |
  - impact analysis for the vaquita does not incorporate more recent research published in volume 15 of Marine Mammal Science;
- 27 |
  - the totoaba is listed as endangered by the U.S. government, 44 Fed.Reg. 29478 (May 21, 1979) and the Mexican government, Normas Oficiales Mexicanas NOM-059-ECOL-1994;
- 28 |
  - the analysis of effects on the totoaba must acknowledge that Reclamation has already found that its operations and activities in the Lower Colorado River may affect the totoaba;
- 29 |
  - the statement that the totoaba "was included in this assessment at the suggestion of the Service and a number of public stakeholders" should be removed. This appears to be taken from the Biological Assessment (1996) and is not applicable here;
- 30 | (3.16-18)
  - status of a recovery plan for the southwestern willow flycatcher should reflect any changes since 1996;

22: This information is included in Reclamation's analysis.

23: This correction has been made.

24: This citation has been corrected.

25: This citation has been added.

26: Recent research for the vaquita has been incorporated in the analysis.

27: The information has been cited in the analysis for the totoaba.

28: The analysis is recognizes effects of past, current and reasonably foreseeable operations on the totoaba as part of the baseline condition.

29: This statement has been removed. Reclamation has received input supporting and opposing analysis of impacts on the totoaba in Mexico.

30: The recent completion of a recovery plan for the southwestern willow flycatcher is noted in the analysis, and is limited to activities in the United States.